

424-08/LJK

Freehill Hogan & Mahar, LLP  
Attorneys for Defendant  
Pacific Inter-Link Sdn Bhd  
80 Pine Street  
New York, NY 10005  
(212) 425-1900  
(212) 425-1901 fax

Lawrence J. Kahn (LK 5215)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EFKO FOOD INGREDIENTS, LTD.,

Plaintiff,

-against-

PACIFIC INTER-LINK SDN BHD,

Defendant.  
-----X

08 CV 6480 (CM)

**REPLY DECLARATION OF  
NAKUL RASTOGI**

Nakul Rastogi, pursuant to 28 U.S.C. §1746 hereby declares and says the following under penalty of perjury:

1. I am the same Nakul Rastogi who previously submitted a declaration in this matter. I refer thereto and submit this Reply Declaration in further support of Defendant Pacific Inter-Link Sdn Bhd ("PIL")'s motion to vacate the attachment in this action based upon my own personal knowledge.

2. I have reviewed the Lyashenko Declaration submitted in opposition to PIL's motion. There are many aspects of this Declaration which are untrue, misleading, or which simply do not make sense. I note as follows:

a. In paragraphs 8 to 10 of the Lyashenko Declaration sets out his communications with Mr Bell on the alleged conclusion of contracts yet fails or neglects to mention that it was a term that the contract offers must be signed and

*Nakul Rastogi*  


returned by the buyer within the time provided to form valid effective contracts which Mr Bell ought to have informed him.

b. In paragraph 12 of the Lyashenko Declaration, Mr. Lyashenko purports to be in a position on September 10 to explain the agreed conditions and terms of six contracts, yet the contract offers from PIL only reached Mr. Bell/Pontus on September 11. Mr. Lyashenko's statement also does not square with Mr. Bell's return email to me on September 11 stating that he had not yet forwarded the contract offers to EFKO because he first needed to translate them. I note also that Lyashenko Ex. 3 (referenced in paragraph 12 of the Lyashenko Declaration) is plainly incomplete, as the email itself references a "Folder" (an attached file) called "Pontus/Lev", which has been omitted. Presumably, this attachment to the email is a copy of the contract made between Pontus and EFKO (Pontus is of course Mr. Bell's company and "Lev" is both Mr. Lyashenko's initials and the forepart of his email address) that he references in his 26 November 2007 communication to Mr. Marwan Saeed of PIL.

c. Paragraph 13 of Mr. Lyashenko's Declaration attempts to make light of the request to alter the contract terms to provide a quality on delivery warranty (which PIL was unwilling to do). Mr. Lyashenko states both that the term is ordinarily inserted in all of their contracts for oil related commodities, but that it wasn't so important and that they were willing to waive the condition. The offer, however, is on CFR terms, which means that the risk of loss/damage passes to the buyer once cargo passes the ship's rail. For the seller to guarantee condition of the cargo at delivery would require the seller to take on an unusual

*Heak & Rastogi*  


added burden that the cargo could become lost or damaged during transit – a burden for which the seller is not being compensated on CFR terms. The offers stated clearly that condition of the cargo was as per PORAM standard specifications at the time of shipment. It was plain to me when Mr. Bell attempted to negotiate a condition on delivery guarantee that he was attempting to utilize EFKO's intended large purchase as a bargaining tool in further negotiations to obtain a better deal for EFKO. I note that there are no contemporaneous emails supporting Mr. Lyashenko's version of the facts from either Mr. Lyashenko or from Mr. Bell, and that EFKO has also not provided any examples of contracts on CFR terms that contain a quality on delivery clause such as they attempted to negotiate here.

d. Paragraphs 14-16 of Mr. Lyashenko's Declaration indicate that he knew that it was important that he sign and stamp the offers and return them. While he quibbles over the reason, he admits that it should have been done and that it was not done. There is no indication that he ever received translated copies of the offers from Mr. Bell or that he actually signed and stamped any of the offers. If, as EFKO seems to contend, it had translated copies of PIL's offers, then it also had knowledge that the offers required signing, stamping and returning for the offers to mature into contracts. Also, if, as EFKO contends, there were contracts for delivery of the palm oilien directly between EFKO and PIL, then EFKO did not need to wait for Mr. Bell's return to the office – EFKO should have sent the signed and stamped copies directly back to PIL itself (PIL's contact details are printed directly on the offers and are otherwise easy to obtain via the internet). This, however, it did not do.

Neakul




e. Mr. Lyashenko denies receipt of the revocation letter in paragraph 17 of his Declaration. This is surprising, as the fax confirmation sheet in our file indicates that the fax was successfully sent to EFKO. In fact the revocation letter was sent both by fax and email attachment. Copies of the fax confirmation sheet and the email cover sheet are annexed hereto as Ex. 1.

f. Paragraph 18 of Mr. Lyashenko's Declaration claims that contracts were concluded on 7 September and confirmed in writing on 11 September. Neither part of this is correct – final offers were made to EFKO via Pontus/Mr. Bell on September 11, and no confirmation in writing was received on 11 September by PIL regarding such offers. The only confirmation in writing on that date that EFKO produces is Lyashenko Declaration Ex. 3, which is a confirmation from EFKO *to Pontus/Bell* regarding the separate agreement between them – not some agreement between EFKO and PIL.

g. Paragraph 20 of the Lyashenko Declaration claims that I “conveniently omitted” the meeting in October 2007 between him, Mr. Sartan, and Mr. Marwan Saeed of PIL. The negative inference Mr. Lyashenko attempts to create is unfounded, as the fact of this meeting is disclosed in EFKO's message exhibited in my prior Declaration. There are, however, three reasons why the revocation of the offers was not brought up at the dinner meeting by Mr. Saeed:

(i) Edward Sartan, who had set up the meeting to connect PIL with EFKO is an employee of Heterringdon Group Ltd., a competing broker/buyer to Mr. Bell/Pontus and it would be inappropriate to bring this matter up in Mr. Sartan's presence.

Neakul [Signature]




(ii) In any case, Mr. Saeed waited for Mr. Lyashenko to bring the matter up. Mr. Saeed anticipated that the tripartite meeting was an attempt to accomplish what Mr. Bell/Pontus was unable to do. If at that point, EFKO had no notice of the cancellation (as Mr. Lyashenko claims), then it was strange and uncommercial that Mr. Lyashenko did not say at that dinner meeting that the two sides were already engaged in a substantial contract, so that Mr. Sartan would know where he stood. If the contracts had been concluded as EFKO claims, then the same would have been the first between the two companies and certainly if Mr. Lyashenko was so "deadly sure" that the contracts were moving forward, he would have informed Sartan at the meeting.

(iii) The parties were at any rate discussing possible future cooperation between the companies, and as far as Mr. Saeed was concerned, the cancelled offers were in the past and an inappropriate subject for discussion. Because PIL was never sure whether the offers were truly purchases to be made by EFKO or by Bell/Pontus, Mr. Lyashenko's silence on the subject of the cancelled offers was an indication to Mr. Saeed that EFKO was not really concerned with the offers at all and that instead these represented intended purchases by Bell/Pontus.

h. Paragraph 24 of Mr. Lyashenko's Declaration is a poor attempt to explain away the clear words in his letter, that EFKO had contracted with Pontus in the first place who then contracted back-to-back with PIL. His


Neekul



attempt to blame his secretary for such a particular description of the facts is unfortunate. It also does not square with additional evidence against EFKO, as follows:

(i) In/about December 2007 Mr. Bell visited me at PIL's offices in Kuala Lumpur. We discussed ongoing contracts between Pontus and PIL and future business prospects. During this meeting, Mr. Bell brought up the matter of the cancelled EFKO offers, and claimed he had genuinely played his part in getting EFKO to sign their acceptance to the offers but that EFKO had refused. He provided copies of print outs of exchanges between Pontus and EFKO which were in Russian. I told Mr. Bell I was not interested in discussing the matter as the offers had long expired. I kept the papers and have recently sent them out for translation. An analysis of the exchange shows that EFKO and Pontus had a contract between them that was significantly different from the PIL contract offers in all main respects – price, payment, quantity, quality, delivery sizes, and sale terms – CIF or FOB. Quantities of 5,000 ton parcels are discussed and EFKO has to pay 20% down to Pontus.

(ii) More importantly, there seems apparent disagreement between EFKO and Pontus as to who should sign and stamp the PIL offers, with Mr. Lyashenko on the one hand expressly demanding of Mr. Bell "Please can you explain to me why we need to sign a contract with PIL directly?" whilst Mr. Bakusev of EFKO (to whom Mr. Bell had sent the offers for signing says "I propose you (meaning Bell/Pontus) should


*Nakul R. Singh*  


sign the contract..." while on the other hand Mr. Bell cajoled them to sign in the following words, "I ask you not to pick too many faults with them (that is PIL) as in any case it will be me as Pontus Trade that will be fulfilling our terms". A copy of this exchange is annexed hereto as Ex. 2. Please note that this exhibit includes documents previously provided but included herein for the sake of demonstrating the sequence.

i. Paragraph 26 of Mr Lyashenko's declaration alleging that I had informed him that I have not heard of any contracts between EFKO/PIL is unfounded. In his letter of 26 November 2007 Mr Lyashenko had specifically alleged that EFKO had contracted with Pontus Trade not with PIL and Pontus Trade then contracted back to back with PIL. In responding to this letter I had stated that PIL "was quite surprised to note the contents of the letter as we (PIL) never had such contracts between PIL and Pontus Trade".

j. Paragraph 33 of Mr Lyashenko's declaration makes a serious unfounded allegation on PIL's reputation that the rise in market prices "induced PIL to escape their contractual obligations in the attempt to resell the goods at a higher price". PIL as a reliable and reputable supplier of palm oil can easily show numerous live examples where it has consistently supplied its buyers including Pontus Trade, when the market price exceeded contract price by USD 250 and more.

3. I have also reviewed Mr. Bakusev's Declaration, which adds nothing, because it essentially repeats the allegations in Mr. Lyashenko's Declaration. Mr. Bakusev is a Risk Assessment Manager at EFKO, not an administrator, and so any

*Nakul Rastogi*  


information he would have regarding this matter is second-hand at best (likely stemming from Mr. Lyashenko) in any event.

4. Responding to Mr. Bell's Declaration, which I have also reviewed, I note as follows:

a. I refer to paragraphs 6 and 7 of the Bell's declaration and completely deny that a meeting ever took place in Malaysia on or around 7 September 2007 between Mr Bell, myself and Mr Marwan Saeed to discuss the EFKO business. I reiterate all discussions with Mr Bell on EFKO business on 7 September 2007 was via telephone discussions only. It is obvious Mr Bell, realizing the tenuousness of his earlier position of telephone discussions, now alleges a meeting in Malaysia with PIL to bolster his/EFKO's position. Mr Bell, with whom I am on personal terms and know that he visits Malaysia on a regular basis, may well have been in Malaysia at that time but certainly no meeting took place between Mr Bell or anyone in PIL concerning the EFKO business, only telephone discussions on 7 September 2007. This is expressly confirmed at paragraph 8 of the Lyshenko Declaration where Mr Lyashenko states: *"On the 8 September 2007 Mr Bell informed me by telephone that on the 7 September 2007 he had held telephone negotiations with Mr Nakul Rastogi, an authorised commodity trader of PIL, which resulted in the conclusion of by word of mouth of six contracts...."*. Further confirmation comes from Mr Timur Bakusev where at paragraph 9 of the Bakusev Declaration, he states: *"On the 8 September 2007 Mr Bell advised Mr Lyashenko and me that he had concluded with Mr Nakul Rastogi from PIL by phone six contracts for the delivery of palm oilien."*

*Nakul Rastogi*






b. I refer to paragraph 10 of the Bell declaration and reiterate that I had specifically notified Mr Bell that PIL agrees to issue contract offers for the palm oil on the basis of locked in prices as at 7 September 2007 for EFKO's unequivocal acceptance of all the terms and conditions of sale by their signature and return within the time provided. Mr Bell assured me this will be the case.

c. I refer to paragraph 12 of the Bell declaration and say this is a poor attempt by Mr Bell to camouflage the actual position which was that EFKO were in the process of negotiating the terms of the contract offers by addition of other terms.

d. I refer to paragraphs 13 to 15 of the Bell declaration and say if Mr Bell had indeed sought the agreement on double commitment merely for the purpose of ensuring goods were actually meant for EFKO not Pontus, this was surprising to say the least when the contract offers clearly identified EFKO as the buyer and it was EFKO's acceptance that PIL required and insisted upon, not Pontus. Mr Bell at all material times knew PIL's position that the contract offers had to be signed, stamped and returned by EFKO because firstly, they were forward contracts with a new customer and secondly for internal authority to facilitate the buying in of the palm oil for supply to buyer.

e. PIL and Mr Bell/Pontus have enjoyed a long standing relationship. Our first interactions with Mr Bell/Pontus required him to sign, stamp and return our written offers in full acceptance of the terms and conditions of our sale, which he did. He is fully in the know of PIL's standard


*Noel Rastogi*  


terms and conditions of sale and the need for PIL's written offers to be signed, stamped and returned. See, for example Exhibit 3.

f. Over time, and as Mr Bell became a trusted and established regular purchaser, PIL sends him daily reports on the price of palm oil and he sometimes places orders for small lots which Pontus buys on speculation or to satisfy Pontus's existing orders. These lots are combined periodically for the purpose of shipment and – because the pricing differs over the course of say a month – his account is finally settled later by a pricing mechanism agreed between Bell and PIL. For these small periodic purchases, PIL exercised clause 6 of its Standard Terms and Conditions and “otherwise agreed” with Mr Bell there was no longer a need for him for him to execute written offers in order to form binding contract with PIL. PIL operates this way with many other similarly situated regular purchasers of palm oil.

g. With regard to the EFKO situation, Mr. Bell was well aware that the situation was different. Mr. Bell was discussing with me what was to be (for him) a substantial forward purchase on behalf of a large company that PIL did not know him to have represented in the past. PIL was concerned that Mr. Bell/Pontus did not have the wherewithal to make the purchase and wanted the assurance that he was, in fact, working on behalf of EFKO. It was for these reasons that I insisted that Mr. Bell arrange for the signing, stamping and returning of our offer. I wanted to be sure that EFKO (assuming Mr. Bell really was representing EFKO and was not acting as an intermediary) was aware of the Standard Terms and the conditions of the offer.

*Naakul Rastogi*



h. I chased Mr. Bell on a number of occasions regarding these offers and the need to have them signed, stamped and returned in order to have them finalized as contracts. It never happened and on Mr. Bell's representation that he was acting merely as an agent for EFKO, I sent the cancellation to EFKO directly on the basis they were the contracting buyer and principal. In hindsight it might have been better to also provide a written copy to Mr. Bell, but this was not done.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Dated: Kuala Lumpur, Malaysia  
4 September 2008

By:

Nakul  
Nakul Rastogi



RASTOGI REPLY DECLARATION

EXHIBIT 1

**From:** Nakul  
**Date:** 24/9/2007 1:01:09 PM  
**To:** EFKO(lev@efko.org)  
**Subject:** Cancellation of Sales contracts

Dear Mr Evgeny,

Please find enclosed our letter related to various sales contracts for Jan/Feb/March and April/May/June.

Best regards,

Nakul Rastogi  
Chief Commodity Trader  
Pacific Inter - Link Sdn Bhd  
☎ +603 4042 3933 (General)  
☎ +603 4042 3973 (Direct)  
☎ +603 4044 3163 (Direct)  
☎ +603 4043 1503 (Direct)  
☎ +6012 320 7040  
Skype Id : rastoginakul



**PACIFIC INTER-LINK SDN BHD**

(Company No. 171377-M)  
31st FLOOR MENARA DATO'ONN, PUTRA WORLD TRADE CENTRE  
45, JALAN TUN ISMAIL, 50480 KUALA LUMPUR, MALAYSIA.  
TEL : +60-3-40423933 (10 LINES)  
FAX: +60-3-40413939/40428088



**TO : EFKO FOOD INGREDIENTS LIMITED  
RUSSIA**

**FROM : PACIFIC INTER-LINK SDN BHD**

**DATE : 24<sup>TH</sup> SEPTEMBER 2007**

**REF. : SALES CONTRACT No. PIL/PO/0689/07, PIL/PO/0690/07,  
PIL/PO/0691/07, PIL/PO/0692/07, PIL/PO/0693/07 AND  
PIL/PO/0694/07 DATED 07.09.07 FOR JAN/FEB/MARCH AND  
APRIL/MAY/JUNE SHIPMENT FOR 1500 MT RBD PALM  
OLEIN EACH**

This has reference to the above mentioned Sales Contracts for the business concluded on 7<sup>th</sup> Sept 07.

We regret that despite very clear terms of the contracts that you would sign and stamp these contracts as acceptance of all the terms and conditions and send back to us, we have till date, till 24<sup>th</sup> Sept 07, not received the signed and stamped Sales Contracts from you.

In these circumstances, we have no choice but to exercise our option as mentioned in all the sales contracts and given below and treat the contracts as cancelled and null and void.

“ THE BUYER SHALL ACKNOWLEDGE CONTENTS AND RECEIPT OF THIS DOCUMENT, BY THE CLOSE OF THE WORKING HOURS, TODAY BY RETURNING THE SIGNED/SEALED COPY TO THE SELLERS. IF THE SIGNED AND SEALED COPY OF THE CONTRACT IS NOT RECEIVED AS MENTIONED ABOVE, THE SELLER SHALL RESERVE THE RIGHT TO CANCEL THE CONTRACT”

Please note that we shall no longer be responsible for these contracts and related obligations.

Please be guided accordingly.

Best regards,

**NAKUL RASTOGI  
CHIEF COMMODITY TRADER**

\*\*\*\*\*  
\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO	4399
CONNECTION TEL	0074732396304
SUBADDRESS	
CONNECTION ID	
ST. TIME	24/09 14:29
USAGE T	00'22
PGS. SENT	1
RESULT	OK

RASTOGI REPLY DECLARATION

EXHIBIT 2



---

From: Adrian Bell <a.bell@omgk.com.ua>  
To: Liashenko E.V. <lev@efko.org>  
Date: 10 September 2007 15:59:29  
Topic: Olein / maslo for 11.2007  
Folder: Pontus / Lev

---

Good afternoon, Eugeni

Finally I have arrived to Odessa!

The very first thing I would like to do is to confirm your fixations from 07.09.07 –  
1500 MT of Olein each month with shipment period from January till June 2008 inclusive.

*[excluded]*

Best regards,

Adrian

*[excluded]*

---

From: Liashenko E.V. <[lev@efko.org](mailto:lev@efko.org)>  
To: "Adrian Bell" <[a.bell@omgk.com.ua](mailto:a.bell@omgk.com.ua)>  
Date: 11 September 2007 8:40:44 AM  
Topic: Olein / maslo for 11.2007  
Folder: Pontus / Lev

---

Hello Adrian!

I confirm the fixations from 07.09.07 –  
1500 MT of Olein each month with shipment period from January till June 2008 inclusive.

Eugeny Liashenko

[lev@efko.org](mailto:lev@efko.org)

---

**From:** Nakul Rastogi  
**Date:** 6/11/2008 14:48:10  
**To:** Nakul Rastogi (Off)  
**Subject:** Fwd: EFKO CONTRACTS

----- Forwarded message -----

**From:** Adrian Bell <a.bell@omgk.com.ua>  
**Date:** Sep 11, 2007 10:10 PM  
**Subject:** Re: EFKO CONTRACTS  
**To:** Nakul <nakul@pacificinter-link.com>, "Nakul (GMAIL)" <nakulrastogi@gmail.com>  
**Cc:** Ravi <ravi@pacificinter-link.com>, Dipal <dipal@pacificinter-link.com>

Dear Nakul,

I think that the contract looks reasonable/standard, with the exception of missing quality guarantee at disport and the final sentence regarding signature/non-signature (I cannot guarantee on which day it will be signed, not least because I must first translate it).

Also, I imagine we need an agreement on non-double-commitment as we once had with Pontus and OMZhK.

Brgds,  
Adrian.

----- Original Message -----

**From:** Nakul  
**To:** Adrian ; Adrian 2 (Hotmail) ; Adrian 3 ; Adrian Bell ; Nakul (GMAIL) ; a.bell@omgk.com.ua  
**Cc:** Ravi ; Dipal  
**Sent:** Tuesday, September 11, 2007 3:39 PM  
**Subject:** EFKO CONTRACTS

Dear Adrian,

Please find enclosed our sales contracts for the 1500 X 3 MT RBD Palm Olein sold to EFKO on 07.09.07 for Jan/Feb/March shipme

Hope you find the same in order.

Best regards,

Nakul

FREE Animations for your email - by IncrediMail! [Click Here!](#)



6/11/2008

**PACIFIC INTER-LINK SDN BHD**

31<sup>st</sup> FLOOR, MENARA DATO ONN', PUTRA WORLD TRADE CENTRE  
 45 JALAN TUN ISMAIL, 50480 KUALA LUMPUR  
 TEL: 603 - 4042 3933 FAX: 603 - 4041 3939 / 4042 8088

4

Form No: PIL/FM/006  
 Rev No: 0  
 Page 1 of 4

**SALES CONTRACT**

TO: EFKO FOOD INGREDIENTS LIMITED  
 RUSSIA

DATE : 07/09/2007  
 OUR REF: PIL/PO/0689/07

AMENDMENT NO :  
 AMENDMENT DATE :

ATTN :

YOUR REF:

WE ARE PLEASED TO CONFIRM HAVING SOLD TO YOU THE FOLLOWING SUBJECT  
 TO OUR GENERAL TERMS AND CONDITIONS OF SALE AND AS PER HEREUNDER :

S/NO.	DESCRIPTION OF GOOD(S)	QTY	UNIT PRICE (USD)	TOTAL VALUE (USD)
	RBD PALM OLEIN IN BULK PMT CFR PORT ILYICHEVSK	1,500 MTS	809.00	1,213,500.00

COUNTRY OF ORIGIN : MALAYSIA / INDONESIA

PORT OF LOADING : MALAYSIA / INDONESIA

SHIPMENT MONTH : JANUARY 2008

PACKING : IN BULK

PAYMENT TERMS : 100 % OF THE INVOICE VALUE BY TELEGRAPHIC TRANSFER  
 TO PIL'S BANK 15 DAYS BEFORE THE ARRIVAL OF  
 PERFORMING VESSEL TO THE DISCHARGE PORT  
 CARRYING THE CONTRACTED QUANTITIES.

BANK DETAILS : RHB BANK BERHAD

Address : KL TRADE SERVICES CENTRE,  
 LEVEL 3,4, & 5, NO: 75, JALAN TUN H.S. LEE  
 50000 KUALA LUMPUR.

Account No : USD A/C NO: 61412900006928

Swift No : RHBBMYKL

Correspondent  
 Bank for USD A/C : BANK OF NEW YORK

SWIFT : IRVTUS3N

**PACIFIC INTER-LINK SDN BHD**

31<sup>st</sup> FLOOR, MENARA DATO ONN', PUTRA WORLD TRADE CENTRE  
45 JALAN TUN ISMAIL, 50480 KUALA LUMPUR  
TEL: 603 - 4042 3933 FAX: 603 - 4041 3939 / 4042 8088

Form No: PIL/FM/006  
Rev No: 0  
Page 2 of 4

**SPECIFICATIONS** : **AS PER PORAM STANDARD SPECS  
(AT THE TIME OF SHIPMENT)**

**WEIGHT** : **AS FINAL AT LOAD PORT. FINAL WEIGHT AT  
LOAD PORT TO BE ASCERTAINED BY A FIRST  
CLASS SURVEYOR APPOINTED BY THE SELLER.**

**QUALITY** : **FINAL AT LOADPORT AS PER FIRST CLASS  
SURVEYOR'S CERTIFICATE, APPOINTED BY SELLER  
AT THEIR EXPENSE. SELLER'S TO PROVIDE NON-  
RADIOACTIVITY CERTIFICATE UPON REQUEST,  
PHYTOSANITARY AND FITNESS CERTIFICATE ISSUED BY  
INDEPENDENT SURVEYOR**

**QUANTITY** : **5% MORE OR LESS AT SELLER'S OPTION**

**INSURANCE** : **BUYER TO COVER INSURANCE**

**PORT OF DISCHARGE** : **PORT IYICHEVSK**

**DISCHARGE** : **BUYER'S SHALL ENSURE TO:**

- A) GUARANTEE TO DISCHARGE VESSEL AT THE MINIMUM  
RATE OF 100 MT PER RUNNING HOURS - SUNDAYS AND  
HOLIDAYS INCLUDED.**
- B) IT SHALL BE THE RECEIVER'S RESPONSIBILITY TO  
TAKE ALL CARE FOR THE PROMPT BERTHING OF THE  
VESSEL**
- C) LAYTIME TO COUNT 6 HOURS AFTER THE NOTICE OR  
UPON BERTHING OF THE VESSEL, WHICHEVER IS  
EARLIER.**
- D) DEMURRAGE IF ANY, RESULTING FROM NON-  
COMPLIANCE TO CONDITIONS OF CL (A) & (B) & (C)  
ABOVE CLAIMED AS PER THE CHARTER PARTY, BY THE  
OWNERS OF THE VESSEL SHALL BE TO THE  
RECEIVER'S ACCOUNT AND PAID WITHIN 7 WORKING  
DAYS OF THE CLAIM. THE DEMURRAGE SHALL BE  
GOVERNED BY THE CHARTER PARTY, NO DESPATCH.**



**PACIFIC INTER-LINK SDN BHD**

31<sup>st</sup> FLOOR, MENARA DATO ONN, PUTRA WORLD TRADE CENTRE  
45 JALAN TUN ISMAIL, 50480 KUALA LUMPUR  
TEL: 603 - 4042 3933 FAX: 603 - 4041 3939 / 4042 8088

Form No: PIL/FM/006  
Rev No: 0  
Page 3 of 4

**OTHER TERMS & CONDITIONS:**

- I) EXTENSION OF SHIPMENT & ARBITRATION, RELATING TO THE TERMS OF THIS CONTRACT, WITH ARBITRATION IN LONDON, SHALL BE AS PER FOSFA-81, ABOUT WHICH THE PARTIES HAVE KNOWLEDGE AND NOTICE AND HEREBY ACCEPT.
- II) CHARTER PARTY BILL OF LADING IS ACCEPTABLE.
- III) LAST THREE CARGOES TO BE CLEAN AND UNLEADED AND LAST CARGO NOT ON THE FOSFA BANNED LIST.
- IV) IN CASE EITHER PARTY DEFAULTS ON THE EXECUTION OF THE CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT, THE AGGRIEVED PARTY SHALL BE ENTITLED TO RECOVER ANY OR ALL CONSEQUENTIAL DAMAGES (SUCH AS, BUT NOT LIMITED, TO COST OF MATERIAL, STORAGE FREIGHT, INTEREST AND OTHERS) FROM THE DEFAULT PARTY.
- V) THIS CONTRACT IS ONLY FOR PHYSICAL DELIVERY NO WASHOUT SHALL BE ALLOWED FOR THE CONTRACTED QUANTITIES.
- VI) NEITHER PARTY SHALL BEAR RESPONSIBILITY FOR DEFAULT OF THEIR OBLIGATIONS UNDER THE CONTRACT, IF IT IS A CONSEQUENCE OF FORCE-MAJEURE CIRCUMSTANCES, NAMELY: ACT OF GOD, STRIKES, LOCKOUTS, RIOTS, CIVIL COMMOTIONS, FIRES, NATURAL DISASTERS, MILITARY ACTIONS, EMBARGO, VESSEL ACCIDENT, GROUNDING OR ANY OTHER CAUSE COMPREHENDED BY THE TERM FORCE MAJEURE AT PORT/S OF LOADING OR ELSEWHERE PREVENTING TRANSPORT OF THE GOODS TO DISCHARGE PORT/S.
- VII) THE PARTY FOR WHOM FORCE-MAJEURE CIRCUMSTANCES OCCUR MUST IMMEDIATELY, WITHIN 72 HOURS OF THEIR OCCURRENCE, NOTIFY THE OTHER PARTY IN WRITING (EITHER BY FAX OR E-MAIL) AND SUPPLY DOCUMENTARY EVIDENCE.
- VIII) AFTER THE OCCURRENCE AND NOTIFICATION OF FORCE-MAJEURE CIRCUMSTANCES, THE PARTIES MUST IMMEDIATELY COORDINATE THE NECESSARY MEASURES TO OVERCOME SUCH FORCE-MAJEURE CIRCUMSTANCES.

7



**PACIFIC INTER-LINK SDN BHD**

31<sup>st</sup> FLOOR, MENARA DATO ONN, PUTRA WORLD TRADE CENTRE  
45 JALAN TUN ISMAIL, 50480 KUALA LUMPUR  
TEL: 603 - 4042 3933 FAX: 603 - 4041 3939 / 4042 8088

Form No: PIL/FM/006  
Rev No: 0  
Page 4 of 4

- IX) FAILURE OR DELAY IN NOTIFICATION OF THE OCCURRENCE OF FORCE-MAJEURE CIRCUMSTANCES SHALL BE CONSIDERED AS A VIOLATION OF THE CONTRACT AND SHALL NOT EXEMPT THE PARTY THAT HAS VIOLATED THE CONTRACTUAL CONDITIONS FROM HIS LIABILITIES

FOR SELLER  
PACIFIC INTER-LINK SDN BHD

FOR BUYER

*Nakul Festigi*

NOTE: THE BUYERS SHALL ACKNOWLEDGE CONTENTS AND RECEIPT OF THIS DOCUMENT, BY THE CLOSE OF THE WORKING HOURS, TODAY BY RETURNING THE SIGNED / SEALED COPY OF THE SELLERS. IF THE SIGNED & SEALED COPY OF THE CONTRACT IS NOT RECEIVED AS MENTIONED ABOVE, THE SELLER SHALL RESERVE THE RIGHT TO CANCEL THE CONTRACT.

8

Page 1 of 1

**From:** Nakul

**Date:** 9/11/2007 8:41:47 PM

**To:** Adrian; Adrian 2 (Hotmail); Adrian 3; Adrian Bell; Nakul ( GMAIL);  
a.bell@omgk.com.ua

**Cc:** Ravi Nagar; Dipal

**Subject:** EFKO CONTRACTS

Dear Adrian,

Please find enclosed our sales contracts for the 1500 X 3 MT RBD Palm Olein sold to EFKO on 07.09.07 for APRIL/MAY/JUNE shipments.

Hope you find the same in order.

Best regards,

Nakul



9

Page 1 of 1

**From:** Nakul Rastogi  
**Date:** 6/11/2008 14:48:10  
**To:** Nakul Rastogi (Off)  
**Subject:** Fwd: EFKO CONTRACTS

----- Forwarded message -----

**From:** Adrian Bell <a.bell@omgk.com.ua>  
**Date:** Sep 11, 2007 10:10 PM  
**Subject:** Re: EFKO CONTRACTS  
**To:** Nakul <nakul@pacificinter-link.com>, "Nakul ( GMAIL )" <nakulrastogi@gmail.com>  
**Cc:** Ravi <ravi@pacificinter-link.com>, Dipal <dipal@pacificinter-link.com>

Dear Nakul,

I think that the contract looks reasonable/standard, with the exception of missing quality guarantee at disport and the final sentence regarding signature/non-signature (I cannot guarantee on which day it will be signed, not least because I must first translate it).

Also, I imagine we need an agreement on non-double-commitment as we once had with Pontus and OMZhK.

Brgds,  
Adrian.

----- Original Message -----

**From:** Nakul  
**To:** Adrian ; Adrian 2 (Hotmail) ; Adrian 3 ; Adrian Bell ; Nakul ( GMAIL ) ; a.bell@omgk.com.ua  
**Cc:** Ravi ; Dipal  
**Sent:** Tuesday, September 11, 2007 3:39 PM  
**Subject:** EFKO CONTRACTS

Dear Adrian,

Please find enclosed our sales contracts for the 1500 X 3 MT RBD Palm Olein sold to EFKO on 07.09.07 for Jan/Feb/March shipme

Hope you find the same in order.

Best regards,

Nakul

FREE Animations for your email - by IncrediMail! [Click Here!](#)



**From:** Nakul  
**Date:** 9/14/2007 18:08:01  
**To:** Adrian; Adrian 2 (Hotmail); Adrian 3; Adrian Bell; Nakul ( GMAIL);  
a.bell@omgk.com.ua  
**Cc:** Ravi; Dipal  
**Subject:** Re: EFKO CONTRACTS

Dear Adrian,

We refer to the Sales contracts sent along with the below E Mail on 11/09/07.

Please note that these being our first contracts with EFKO and as per our internal control for forward contracts, we need some one authorized from EFKO to stamp and sign these contracts and fax/E mail back to us urgently.

Please ensure that these contracts are received back by us by Monday -17th September.

Best regards,

Nakul

-----Original Message-----

**From:** Nakul  
**Date:** 9/11/2007 8:39:06 PM  
**To:** Adrian; Adrian 2 (Hotmail); Adrian 3; Adrian Bell; Nakul ( GMAIL);  
a.bell@omgk.com.ua  
**Cc:** Ravi; Dipal  
**Subject:** EFKO CONTRACTS

Dear Adrian,

Please find enclosed our sales contracts for the 1500 X 3 MT RBD Palm Olein sold to EFKO on 07.09.07 for Jan/Feb/March shipments.

Hope you find the same in order.

Best regards,

Nakul

**From:** Nakul Rastogi  
**Date:** 6/11/2008 14:48:05  
**To:** Nakul Rastogi (Off)  
**Subject:** Fwd: EFKO CONTRACTS

----- Forwarded message -----

From: Adrian Bell <[adrian@bk.ru](mailto:adrian@bk.ru)>  
Date: Sep 17, 2007 6:41 PM  
Subject: Re: EFKO CONTRACTS  
To: Nakul <[nakul@pacificinter-link.com](mailto:nakul@pacificinter-link.com)>  
Cc: "Nakul ( GMAIL)" <[nakulrastogi@gmail.com](mailto:nakulrastogi@gmail.com)>, Ravi <[ravi@pacificinter-link.com](mailto:ravi@pacificinter-link.com)>, Dipal <[dipal@pacificinter-link.com](mailto:dipal@pacificinter-link.com)>

Dear Nakul,  
pls bear with me.  
Best regards,  
Adrian Bell.

- original message -

Subject: Re: EFKO CONTRACTS  
From: "Nakul" <[nakul@pacificinter-link.com](mailto:nakul@pacificinter-link.com)>  
Date: 14/09/2007 10:35

Dear Adrian,

We refer to the Sales contracts sent along with the below E Mail on 11/09/07

Please note that these being our first contracts with EFKO and as per our internal control for forward contracts, we need some one authorized from EFKO to stamp and sign these contracts and fax/E mail back to us urgently.

Please ensure that these contracts are received back by us by Monday -17th September.

Best regards,

Nakul

-----Original Message-----

From: Nakul

Date: 9/11/2007 8:39:06 PM  
To: Adrian; Adrian 2 (Hotmail); Adrian 3; Adrian Bell; Nakul ( GMAIL);  
[a.bell@omgk.com.ua](mailto:a.bell@omgk.com.ua)

Cc: Ravi; Dipal  
Subject: EFKO CONTRACTS

Dear Adrian,

Please find enclosed our sales contracts for the 1500 X 3 MT RBD Palm Olein  
sold to EFKO on 07.09.07 for Jan/Feb/March shipments.

Hope you find the same in order.

Best regards,

Nakul

6/11/2008

**Adrian Bell**

---

**From:** "Bakusev Timur" <t.bakusev@efko.org>  
**To:** "Adrian Bell" <a.bell@omgk.com.ua>  
**Sent:** 19 September 2007 13.54  
**Subject:** Re[2]: According to the contract

Hello Adrian,

On 18 September 2007, 13:03:00 you wrote:

- > Hi Timur,
- > I would also clarify the moment of payment as the valuation date.
- > Furthermore, we agreed on the advance of 20%, payable 15 days before receipt.
- > However, given that the minimum consignment of olein in any month is 5,000 MT, and it seems
- > that you bought a large volume by tender I need clarifications from you in order to calculate
- > when I need to pay what!
- > I would also ask you to sign a confirmation with PIL, which I will send separately now. I ask you
- > not to pick too many faults with them as in any case it will be me as Pontus Trade that will be
- > fulfilling our terms. If you need some kind of official letter concerning this we can provide
- > one!
- > Yours sincerely,
- > Adrian.

> ---- Original Message ----  
> From: "Bakusev Timur" <t.bakusev@efko.org>  
> To: "Adrian Bell" <a.bell@omgk.com.ua>  
> Sent: Monday, September 17, 2007 2:49 PM  
> Subject: According to the contract

- > Good afternoon Adrian,
- > In accordance with the agreement concluded concerning the delivery of tropical oils to EFKO
- > and the agreed prices, please send us a contract and the specifications of the agreed
- > shipments and indicate the terms for effecting prepayments according to the specifications.
- > I only have one addition to the contract:
- > I propose adding the following documents to point 2.6 of the contract:
- > - unloading allocation
- > - calculation of the value of the goods.

Adrian, good afternoon,

I spoke to Liashenko. I propose you should sign the contract on the agreed terms indicating the approximate deadlines for the goods to leave the port of shipment. Closer to the shipping deadlines we will either combine the loads into larger consignments or choose from the volumes

22.11.2007

Page 2 of 2

shipped by you (on the basis of them being with you in the port).

--

Yours sincerely,  
Timur Bakusev  
Risk Management  
CJSC EFKO Management Company

<mailto:t.bakusev@efko.org>

22.11.2007

14

**From:** Nakul Rastogi  
**Date:** 6/11/2008 14:48:10  
**To:** Nakul Rastogi (Off)  
**Subject:** Fwd: EFKO CONTRACTS

----- Forwarded message -----  
**From:** Adrian Bell <a.bell@omgk.com.ua>  
**Date:** Sep 18, 2007 5:29 PM  
**Subject:** Re: EFKO CONTRACTS  
**To:** Nakul <nakul@pacificinter-link.com>, "Nakul (GMAIL)" <nakulrastogi@gmail.com>  
**Cc:** Ravi Nagar <ravi@pacificinter-link.com>, Dipal <dipal@pacificinter-link.com>

Hi Nakul,

Back in the office today, i've sent the contracts to EFKO for signing.

As I mentioned in my initial reply to your request that EFKO sign your confirmations, I think that we need a (tripartite) letter clarifying that there is no double commitment and that execution of the contracts shall be carried out via Pontus.

Agree?

Brgds,

Adrian.

----- Original Message -----

**From:** Nakul  
**To:** Adrian ; Adrian 2 (Hotmail) ; Adrian 3 ; Adrian Bell ; Nakul (GMAIL) ; a.bell@omgk.com.ua  
**Cc:** Ravi Nagar ; Dipal  
**Sent:** Friday, September 14, 2007 1:08 PM  
**Subject:** Re: EFKO CONTRACTS

Dear Adrian,

We refer to the Sales contracts sent along with the below E Mail on 11/09/07.

Please note that these being our first contracts with EFKO and as per our internal control for forward contracts, we need some one authorized fr EFKO to stamp and sign these contracts and fax/E mail back to us urgently.

Please ensure that these contracts are received back by us by Monday -17th September.

best regards,

Nakul

-----Original Message-----

**From:** Nakul  
**Date:** 9/11/2007 8:41:47 PM  
**To:** Adrian; Adrian 2 (Hotmail); Adrian 3; Adrian Bell; Nakul (GMAIL); a.bell@omgk.com.ua  
**Cc:** Ravi Nagar; Dipal  
**Subject:** EFKO CONTRACTS

Dear Adrian,

Please find enclosed our sales contracts for the 1500 X 3 MT RBD Palm Olein sold to EFKO on 07.09.07 for APRIL/MAY/JUNE shipments.

Hope you find the same in order.

Best regards,

Nakul

FREE Animations for your email - by IncrediMail! [Click Here!](#)



6/11/2008

15

Page 1 of 2

**Adrian Bell**

---

**From:** "Bakusev Timur" <t.bakusev@efko.org>  
**To:** "Adrian Bell" <a.bell@omgk.com.ua>  
**Sent:** 19 September 2007 13.54  
**Subject:** Re[2]: According to the contract

Hello Adrian,

On 18 September 2007, 13:03:00 you wrote:

- > Hi Timur,
- > I would also clarify the moment of payment as the valuation date.
- > Furthermore, we agreed on the advance of 20%, payable 15 days before receipt.
- > However, given that the minimum consignment of olein in any month is 5,000 MT, and it seems
- > that you bought a large volume by tender I need clarifications from you in order to calculate
- > when I need to pay what!
- > I would also ask you to sign a confirmation with PIL, which I will send separately now. I ask you
- > not to pick too many faults with them as in any case it will be me as Pontus Trade that will be
- > fulfilling our terms. If you need some kind of official letter concerning this we can provide
- > one!
- > Yours sincerely,
- > Adrian.
- > ----- Original Message -----
- > From: "Bakusev Timur" <t.bakusev@efko.org>
- > To: "Adrian Bell" <a.bell@omgk.com.ua>
- > Sent: Monday, September 17, 2007 2:49 PM
- > Subject: According to the contract

> Good afternoon Adrian,

- > In accordance with the agreement concluded concerning the delivery of tropical oils to EFKO
- > and the agreed prices, please send us a contract and the specifications of the agreed
- > shipments and indicate the terms for effecting prepayments according to the specifications.
- > I only have one addition to the contract:
- > I propose adding the following documents to point 2.6 of the contract:
- > - unloading allocation
- > - calculation of the value of the goods.

Adrian, good afternoon,

I spoke to Liashenko. I propose you should sign the contract on the agreed terms indicating the approximate deadlines for the goods to leave the port of shipment. Closer to the shipping deadlines we will either combine the loads into larger consignments or choose from the volumes

22.11.2007

**Adrian Bell**

---

**From:** "Adrian Bell" <a.bell@omgk.com.ua>  
**To:** "EFKO Liashenko E.V." <lev@efko.org>  
**Sent:** 19 September 2007 8:58  
**Subject:** Pontus

Hi Yevgeniy,

Yesterday evening I spoke to Timur about the 6 x 1,500 MT of olein. For some reason he was surprised that I cannot supply 1,500 MT a month.

When we agreed on the framework contract, I planned for certain volumes at the terminal (including between 5,000 and 15,000 MT per month for you). Now, after your unexpected tender, maybe, others. But, I need to plan!! And so does PIL...

Therefore I would like to hear from you by the end of this week about the plans/proposals concerning this volume of olein.

I would be very pleased if you say that you will increase the orders to 5,000 MT each month. I am also ready to discuss one or two (or more!) deliveries under the agreement.

Please accept my apologies that unforeseen circumstances here currently do not allow me to travel to you.

Yours sincerely,

Adrian.

22.11.2007



**Adrian Bell**

---

**From:** "Adrian Bell" <a.bell@omgk.com.ua>  
**To:** "Liashenko E.V." <lev@efko.org>  
**Sent:** 19 September 2007 10:07  
**Subject:** Re: Pontus

Thank you for your quick reply.

Please try to say with some kind of certainty what is actually going to happen (additional orders and grouping and which months). I really do need to plan the trans-shipment.

PIL just wants to be careful by making it clear who sold to who at what price. As Pontus does, I myself also have my limits on open contracts with PIL (you yourself said that there is nothing on the balance), and, because of the fact that this contract's volume could reach a respectable size, PIL is thus showing its auditors/controllers due risk management towards the other parties to the contract.

Adrian.

----- Original Message -----

From: "Liashenko E.V." <lev@efko.org>  
To: "Adrian Bell" <a.bell@omgk.com.ua>  
Sent: Wednesday, September 19, 2007 10:30 AM  
Subject: Re: Pontus

> Good morning Adrian,

>

> As I said earlier during our telephone conversation, I understand that PIL has to transport a  
> minimum of 5 thousand tonnes for us, that is why I said to you that we would either group the  
> established volumes in two ships, or another possibility may be that we would buy additional  
> volumes to make it up to 5 thousand. I am confirming this now in writing. Please can you  
> explain to me why we need to sign a contract with PIL directly?

>

>

>

>

>

> Yevgeniy Liashenko

>

> [lev@efko.org](mailto:lev@efko.org)

>

>

>

Page 1 of 1

**Adrian Bell**

---

**From:** "Liashenko E.V." <lev@efko.org>  
**To:** "Adrian Bell" <a.bell@omgk.com.ua>  
**Sent:** 19 September 2007 11.15  
**Subject:** Re[2]: Pontus

Good morning,

You can show him the agreement between Pontus and Efko then. Regarding the groupings, it is difficult for me to say at the moment – I cannot foresee my sales for 2008.

Yevgeniy Liashenko

[lev@efko.org](mailto:lev@efko.org)

22.11.2007



19

Lingo24 Ltd: PO Box 18241, Dyce, AB21 9YW UK

Tel.: +44 (0) 20 7952 7916

claudia.marinescu@lingo24.com

13<sup>th</sup> of August, 2008

**TO WHOM IT MAY CONCERN**

I hereby certify that the attached English translation is a true and correct translation of the attached Russian document, to the best of my knowledge and belief.

Signed for and on behalf of Lingo24 Ltd,

Claudia Marinescu  
PROJECT MANAGER – LINGO24 LTD

**Adrian Bell**

---

От: "Бакусев Тимур" <t.bakusev@efko.org>  
Кому: "Adrian Bell" <a.bell@omgk.com.ua>  
Отправлено: 19 вересня 2007 р. 13:54  
Тема: Re[2]: По Контракту

Здравствуйте, Adrian.

Вы писали 18 сентября 2007 г., 13:03:00:

> Привет Тимур!

> И я бы ещё уточнял момент оплаты как день валютирования.

> Кроме этого мы договорились об авансе 20% за 15 дней до прихода. Однако,  
> поскольку минимальная партия олеина в любой месяц составляет 5000мт, и Вы  
> вроде купили большой объём по тендеру, чтобы рассчитать когда что платить  
> мне нужно от Вас уточнения!

> Так же прошу подписать подтверждения с ПИЛом, которые я сейчас отдельно  
> пришлю. Прошу не сильно к ним придираться так как всё-равно выполнять буду я  
> как Понтус Трейд на наших с Вами условиях. Если нужно какое-то официальное  
> письмо об этом, сделаем!

> С уважением,

> Эдриан.

> ----- Original Message -----

> From: "Бакусев Тимур" <t.bakusev@efko.org>  
> To: "Эдриан Белл" <bell@omgk.com.ua>  
> Sent: Monday, September 17, 2007 2:49 PM  
> Subject: По Контракту

> Здравствуйте, Эдриан!

> В соответствии с заключенной договоренностью по поставке ЭФКО  
> тропических масел и согласованными ценами, прошу Вас прислать нам  
> контракт и спецификации на согласованные поставки и указать сроки  
> проведения предоплаты по спецификациям.  
> По контракту у меня единственное дополнение:  
> предлагаю в п. 2.6 контракта внести следующие документы:  
> - разрядка на отгрузку,  
> - калькуляция стоимости товара.

Эдриан, добрый день!

Переговорил с Ляшенко, предлагаем Вам заключить контракты на оговоренных условиях, с указанием ориентировочного срока выхода товара из порта отгрузки. Ближе к срокам отгрузки будем либо объединять отгрузки в более крупные партии, либо выбирать из привезенных Вами

22.11.2007

**Adrian Bell**

---

От: "Ляшенко Е.В." <lev@efko.org>  
Кому: "Adrian Bell" <a.bell@omgk.com.ua>  
Отправлено: 19 вересня 2007 р. 11:15  
Тема: Re[2]: Pontus

Здравствуйте,

ну тогда покажите ему договор между Понтусом и Эфко . по поводу  
группировки - мне тяжело говорить сегодня, я не могу предвидеть  
свои продажи в 2008 г.

Евгений Ляшенко

[lev@efko.org](mailto:lev@efko.org)

22.11.2007

**Adrian Bell**

---

От: "Бакусев Тимур" <t.bakusev@efko.org>  
Кому: "Adrian Bell" <a.bell@omgk.com.ua>  
Отправлено: 19 вересня 2007 р. 13:54  
Тема: Re[2]: По Контракту

Здравствуйте, Adrian.

Вы писали 18 сентября 2007 г., 13:03:00:

> Привет Тимур!

> И я бы ещё уточнял момент оплаты как день валютирования.

> Кроме этого мы договорились об авансе 20% за 15 дней до прихода. Однако,  
> поскольку минимальная партия олеина в любой месяц составляет 5000мт, и Вы  
> вроде купили большой объём по тендеру, чтобы рассчитать когда что платить  
> мне нужно от Вас уточнения!

> Так же прошу подписать подтверждения с ПИЛом, которые я сейчас отдельно  
> пришло. Прошу не сильно к ним придирайтесь так как всё-равно выполнять буду я  
> как Понтус Трейд на наших с Вами условиях. Если нужно какое-то официальное  
> письмо об этом, сделаем!

> С уважением,

> Эдриан.

> ----- Original Message -----

> From: "Бакусев Тимур" <t.bakusev@efko.org>  
> To: "Эдриан Белл" <a.bell@omgk.com.ua>  
> Sent: Monday, September 17, 2007 2:49 PM  
> Subject: По Контракту

> Здравствуйте, Эдриан!

> В соответствии с заключенной договоренностью по поставке ЭФКО  
> тропических масел и согласованными ценами, прошу Вас прислать нам  
> контракт и спецификации на согласованные поставки и указать сроки  
> проведения предоплаты по спецификациям.  
> По контракту у меня единственное дополнение:  
> предлагаю в п. 2.6 контракта внести следующие документы:  
> - разрядка на отгрузку,  
> - калькуляция стоимости товара.

Эдриан, добрый день!

Переговорил с Ляшенко, предлагаем Вам заключить контракты на оговоренных условиях, с указанием ориентировочного срока выхода товара из порта отгрузки. Ближе к срокам отгрузки будем либо объединять отгрузки в более крупные партии, либо выбирать из привезенных Вами

22.11.2007

**Adrian Bell**

---

От: "Adrian Bell" <a.bell@omgk.com.ua>  
Кому: "EFKO Liashenko E.V." <lev@efko.org>  
Отправлено: 19 вересня 2007 р. 8:58  
Тема: Pontus

Привет Евгений,

Вчера вечером говорил с Тимуром по-поводу 6 x 1500мт олеина. Он почему-то удивлялся, что я не могу поставлять по 1500мт в месяц.

Когда мы договорились о рамочном контракте, я планировал одни объёмы на терминале (в т.ч. от 5.000 до 15.000мт / мес. для Вас), теперь, после Вашего внезапного тендера, пожалуй, другие. А мне необходимо спланировать!! И ПИЛу тоже...

Поэтому хотел бы от Вас до конца текущей недели услышать о планах/предложениях касательно данного объёма олеина.

Буду очень рад, если скажете, что будете увеличивать заказы до 5000мт каждый месяц. А так же готов обсуждать одну или две (или больше!) поставки по договоренности.

Извините, что неожиданные обстоятельства здесь пока не позволяют к Вам ехать.

Со всем уважением,

Эдриан.

22.11.2007

24

**Adrian Bell**

---

От: "Adrian Bell" <a.bell@omgk.com.ua>  
Кому: "Ляшенко Е.В." <lev@efko.org>  
Отправлено: 19 вересня 2007 р. 10:07  
Тема: Re: Pontus

Спасибо за быстрый ответ.

Постарайтесь, пожалуйста, сказать - хотя с какой-то вероятностью - как на самом деле будет (дозаказ и сгруппировать и какие месяцы). Мне действительно надо спланировать перевалку.

ПИЛ просто хочет быть осторожным, создавая ясность в том, кто кому по чем продал. Поскольку у меня как Pontus есть тоже свои лимиты по открытым позициям перед ПИЛом (Вы сами говорили, что на балансе ничего), и поскольку объем данного контракта может достичь приличных размеров, он таким образом показывает своим аудиторам/контроллерам надлежащее управление рисками по контрагентам.

Эдриан.

----- Original Message -----

From: "Ляшенко Е.В." <lev@efko.org>  
To: "Adrian Bell" <a.bell@omgk.com.ua>  
Sent: Wednesday, September 19, 2007 10:30 AM  
Subject: Re: Pontus

> Здравствуйте, Эдриан!  
>  
> Как я и говорил ранее в телефонном разговоре - я понимаю, что ПИЛу  
> надо везти для нас миним. 5 тыс. тн., поэтому и говорил Вам, что либо  
> мы сгруппируем зафиксированные объемы в 2 корабля, либо, что тоже  
> может быть, мы докупим объемы до 5 тыс. Я подтверждаю это письменно.  
> Прошу пояснить мне зачем нам подписывать договор с ПИЛом напрямую?  
>  
>  
>  
>  
> Евгений Ляшенко  
>  
> lev@efko.org  
>  
>  
>

22.11.2007



**Adrian Bell**

---

От: "Ляшенко Е.В." <lev@efko.org>  
Кому: "Adrian Bell" <a.bell@omgk.com.ua>  
Отправлено: 19 вересня 2007 р. 11:15  
Тема: Ref[2]: Pontus

Здравствуйте,

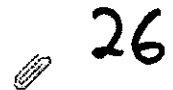
ну тогда покажите ему договор между Понтусом и Эфко . по поводу группировки - мне тяжело говорить сегодня, я не могу предвидеть свои продажи в 2008 г.

Евгений Ляшенко

[lev@efko.org](mailto:lev@efko.org)

22.11.2007

**From:** Nakul  
**Date:** 9/24/2007 13:01:09  
**To:** [EFKO\(lev@efko.org\)](mailto:EFKO(lev@efko.org))  
**Subject:** Cancellation of Sales contracts



Dear Mr Evgeny,

Please find enclosed our letter related to various sales contracts for Jan/Feb/March and April/May/June.

Best regards,

Nakul Rastogi  
Chief Commodity Trader  
Pacific Inter - Link Sdn Bhd  
☎ +603 4042 3933 (General)  
☎ +603 4042 3973 (Direct)  
☎ +603 4044 3163 (Direct)  
☎ +603 4043 1503 (Direct)  
☎ +6012 320 7040  
Skype Id : rastoginakul

9/24/2007

**PACIFIC INTER-LINK SDN BHD**

(Company No. 171377-M)  
31st FLOOR MENARA DATO'ONN, PUTRA WORLD TRADE CENTRE  
45, JALAN TUN ISMAIL, 50480 KUALA LUMPUR, MALAYSIA.  
TEL : +60-3-40423933 (10 LINES)  
FAX: +60-3-40413939/40428088



**TO : EFKO FOOD INGREDIENTS LIMITED  
RUSSIA**

**FROM : PACIFIC INTER-LINK SDN BHD**

**DATE : 24<sup>TH</sup> SEPTEMBER 2007**

**REF. : SALES CONTRACT No. PIL/PO/0689/07, PIL/PO/0690/07,  
PIL/PO/0691/07, PIL/PO/0692/07, PIL/PO/0693/07 AND  
PIL/PO/0694/07 DATED 07.09.07 FOR JAN/FEB/MARCH AND  
APRIL/MAY/JUNE SHIPMENT FOR 1500 MT RBD PALM  
OLEIN EACH**

-----  
This has reference to the above mentioned Sales Contracts for the business concluded on 7<sup>th</sup> Sept 07.

We regret that despite very clear terms of the contracts that you would sign and stamp these contracts as acceptance of all the terms and conditions and send back to us, we have till date, till 24<sup>th</sup> Sept 07, not received the signed and stamped Sales Contracts from you.

In these circumstances, we have no choice but to exercise our option as mentioned in all the sales contracts and given below and treat the contracts as cancelled and null and void.

“ THE BUYER SHALL ACKNOWLEDGE CONTENTS AND RECEIPT OF THIS DOCUMENT, BY THE CLOSE OF THE WORKING HOURS, TODAY BY RETURNING THE SIGNED/SEALED COPY TO THE SELLERS. IF THE SIGNED AND SEALED COPY OF THE CONTRACT IS NOT RECEIVED AS MENTIONED ABOVE, THE SELLER SHALL RESERVE THE RIGHT TO CANCEL THE CONTRACT”

Please note that we shall no longer be responsible for these contracts and related obligations.

Please be guided accordingly.

Best regards,

*Nakul Rastogi*

**NAKUL RASTOGI  
CHIEF COMMODITY TRADER**

28

From: Лашенко Е.В.  
Date: 11/26/2007 23:00:28  
To: Nikul Rastogi  
Subject: Fwd:

Здравствуйте,

Здравствуйте,

С уважением, Евгений Лашенко.

[evgenko.org](mailto:evgenko.org)

С уважением, Евгений Лашенко.

[evgenko.org](mailto:evgenko.org)

---

Attachments Preview:

281107.jpg (Resized to 47%, [Show actual size](#))

6/10/2008

29



ZAO «EFKO Managing Company»  
4, Platonov S  
Voronezh, Russia 3940  
tel. (4732) 39-63-1  
E-mail: managing\_company@efko.ru

«26» November 2007

Dear Mr Marwan,

In September of this year, our company contracted 9000 mt POL for shipment between January and June 2008 with Pontus Trade who, in turn, contracted this quantity back-to-back with PIL, namely 4500 mt POL at \$809 per mt CIF Ilyichevsk (\$740 per mt FOB) for shipment in January-March 2008 and 4500 mt POL at \$804 per mt CIF Ilyichevsk (\$735 per mt FOB) for shipment in April-June 2008.

In November, just a few days after my meeting with you in Moscow, Adrian Bell advised me that, as PIL no longer intends to fulfil its obligations in respect of this deal, his company is not in a position to make delivery either and thus declares default and proposed a tripartite meeting in Ukraine during your visit on 23-27 November. Given the great importance of this matter, I immediately booked a flight to Kiev but, upon arrival in Kiev early on 24 November, Adrian Bell informed me that you did not wish to meet with me and my attempts to reach you by telephone were in vain.

As a result, I am now quite confused as to your position in this matter. I am equally confused by the volte face in your attitude towards me and towards EFKO and I therefore urge you to explain the present situation. I trust that this is all a terrible misunderstanding and that PIL will make delivery of 9000mt POL, thus preserving its reputation as a reliable supplier of tropical oils and maintaining a good working relationship with our company in future.

Sincerely yours,

Evgeny Lyashenko,  
General Manager,  
EFKO Managing Company.

6/10/2008

30

**From:** Nakul  
**Date:** 11/27/2007 13:27:54  
**To:** Ляшенко Е.В.  
**Subject:** Re: Fwd:

Dear Mr Evgeny,

Please find enclosed our letter for your perusal.

  
Nakul Rastogi  
Chief Commodity Trader  
Pacific Inter - Link Sdn Bhd  
☎ +603 4042 3933 (General)  
☎ +603 4042 3973 (Direct)  
☎ +603 4044 3163 (Direct)  
☎ +603 4043 1503 (Direct)  
☎ +6012 320 7040  
Skype Id : rastoginakul  
-----Original Message-----

**From:** Ляшенко Е.В.  
**Date:** 11/26/2007 11:00:28 PM  
**To:** Nakul Rastogi  
**Subject:** Fwd:

Здравствуйте,

Здравствуйте,

С уважением, Евгений Ляшенко.

[lev@efko.org](mailto:lev@efko.org)

С уважением, Евгений Ляшенко.

[lev@efko.org](mailto:lev@efko.org)



**PACIFIC INTER-LINK SDN BHD**

(Company No. 171377-M)  
31st FLOOR MENARA DATO' ONN, PUTRA WORLD TRADE CENTRE  
45, JALAN TUN ISMAIL, 50480 KUALA LUMPUR, MALAYSIA.  
TEL: +60-3-40423933 (10 LINES)  
FAX: +60-3-40413939/40428083



DATE : 27<sup>TH</sup> NOVEMBER 2007

TO : EFKO MANAGING COMPANY

ATTN. : MR EVGENY LYASHENKO

Dear Mr Evgeny,

We refer to your letter addressed to Mr Marwan dated 26.11.07.

We are quite surprised to note the contents of the letter as we never had such contracts between PIL and Pontus Trade.

As regards to the meeting in Kiev, Mr Marwan had a very busy schedule, meeting with lot of people including new clients for further business. He had already met you 1 month back along with Mr Edward and discussed about our future business. Since there was no progress since then, he thought a meeting again so soon may not produce any constructive results.

PIL is quite keen to continue business relations with EFKO and we look forward to do more business with you in future.

Best regards,

*NAKUL RASTOGI*

NAKUL RASTOGI

From: Jlawrence E.B.  
Date: 11/28/2007 20:43:52  
To: nakul@pacificinter-link.com

Attachments Preview:

28.11.07.jpg (Resized to 47%, [Show actual size](#))

6/10/2008



33



ZAO «EFKO Managing Company»  
4, Platonov  
Voronezh, Russia 3941  
tel. (4732) 39-63  
E-mail: managing\_company@efko.

«28» November 2007

Dear Mr Marwan,

I very much appreciate having a prompt reply by Mr. Nakul Rastogi to my letter of 26 November 2007.

However I regret to say that the letter from Mr. Rastogi looks like a mere formal reply. I still hope the refusal of PIL to effect shipment of 9000 mt palm olein results from a misunderstanding between our companies. Such a refusal would seriously undermine the image of your company as perceived by EFKO Group and other partners. In case PIL refuses to effect delivery we shall be obliged to advise of this fact to our major clients (MARS, Kraft Foods etc.) because the olein contracted was intended for production of fats under the contracts with the above mentioned companies and unless PIL delivers the olein we shall have a difficulty supplying the fats at the prices stipulated in September 2007. Since the above mentioned companies keep a prolonged audit trail of suppliers, both PIL and EFKO Group will be included in the "black-list", which means that any cooperation with our company and the companies that buy raw materials from PIL shall be discontinued.

In case you refuse to effect shipment any further business between EFKO and PIL will be completely out of question. For your company this would mean to loose a client who buys nearly 400 thd. mt of tropical oils per year (after we have launched our new plant and transshipment facilities in Taman near Novorossiysk (the Black Sea region) in August 2008).

EFKO Group is a leading oils and fats producer in Russia and CIS, we have an authority in the market and if PIL refuses to effect its obligations we shall not remain silent.

Referring to your proposal to file a lawsuit in order to force your company to fulfill its obligations, we shall undoubtedly be obliged to take action as a final resort. However, I am deeply convinced that settling a dispute in court takes much more resources than finding an amicable solution to the problem.

I look forward to your reply and hope you will not redirect my letter to your subordinates again. I am assured I have never given you cause for avoiding direct contact with me.

Sincerely yours,

Evgeny Lyashenko,  
General Manager,  
EFKO Managing Company.

6/10/2008

**From:** Nakul  
**Date:** 11/29/2007 12:29:14  
**To:** Ляшенко Е.В.  
**Subject:** Your letter

 34

Dear Mr Evgeny,

Please find enclosed our response to your letter.

Best regards,

Nakul

-----Original Message-----

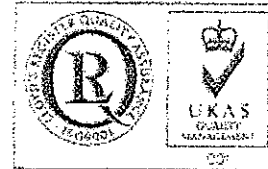
**From:** Ляшенко Е.В.  
**Date:** 11/28/2007 8:48:52 PM  
**To:** nakul@pacificinter-link.com

6/10/2008



**PACIFIC INTER-LINK SDN BHD**

(Company No. 171377-M)  
31st FLOOR MENARA DATO'DNN. PUTRA WORLD TRADE CENTRE  
45, JALAN TUN ISMAIL, 50480 KUALA LUMPUR, MALAYSIA  
TEL: +60-3-45413933 (10 LINES)  
FAX: +60-3-45413934/428088



DATE : 29<sup>TH</sup> NOVEMBER 2007

TO : EFKO MANAGING COMPANY

ATTN. : MR EVGENY LYASHENKO

Dear Mr Evgeny,

We refer to your letter addressed to Mr Marwan dated 28.11.07.

First of all please accept my apologies for not introducing myself in my last letter. I am the Chief Commodity Trader and Head of Palm Oil Department.

We are once again quite surprised to note the contents of the letter where in you have :

- 1) Accused PIL of refusing to meet unknown contractual obligations.
- 2) Referred that PIL has proposed you to file a lawsuit.

Since we are not able to comprehend any of the above two points, we request you to please clarify and let us know the basis of your allegations.

We would like to inform you that PIL is a very reputable supplier which, over the years, has gained market share in its markets by hard work and total commitment towards its clients.

Best regards,

  
NAKO RASTOGI

36

From: Zatsechenko E.B.  
Date: 11/29/2007 15:31:45  
To: Nakul Rastogi  
Subject: Fwd: Re: Fwd: Your letter

---

Attachments Preview

291107.jpg (Resized to 71%, Show actual size)

6/10/2008



ZAO «EFKO Managing Company  
4, Platonov St.  
Voronezh, Russia 3940  
tel. (+732) 39-6-3  
e-mail: managing\_company@efko.ru

29 November 2007

Mr. Nakul Rastogi  
Chief Commodity Trader  
Pacific Inter-Link Sdn. Bhd.

Dear Mr. Nakul,

I refer to your letter of 29 November 2007.

I am pleased to make your acquaintance. However, I have to remind you that my letters were addressed to Mr. Marwan. Therefore I should appreciate an e-mail address at which I can send a letter for Mr. Marwan in order to receive a reply from him.

I look forward to hearing from you.

Yours sincerely,

Evgeny Lyushenko,  
General Manager,  
EFKO Managing Company.

6/10/2008

38

**From:** Nakul  
**Date:** 11/29/2007 19:11:45  
**To:** Ляшенко Е.В.  
**Subject:** Re: Fwd: Re: Fwd: Your letter

Dear Mr Evgeny,

Mr Marwan's E Mail ID is [marwan@pacificinter-link.com](mailto:marwan@pacificinter-link.com)

Best regards,

Nakul

-----Original Message-----

**From:** Ляшенко Е.В.  
**Date:** 11/29/2007 3:31:45 PM  
**To:** Nakul Rastogi  
**Subject:** Fwd: Re: Fwd: Your letter

6/10/2008

39

From: Marwan  
Date: 11/30/2007 10:01:38  
To: nakul  
Subject: Fw:

----- Original Message -----  
From: "Давиденко Е.В." <evd@ydo.org>  
To: <marwan@pacificinter-link.com>  
Sent: Thursday, November 29, 2007 8:30 PM  
Subject: Fwd:

> Здравствуйте,  
>  
>  
>  
>  
> С уважением, Евгений Давиденко.  
>  
> [evd@ydo.org](mailto:evd@ydo.org)

Attachments Preview:

28.11.07.jpg (Resized to 47%. [Show actual size](#))

6/10/2008

40



ZAO «EFKO Managing Company»  
4, Platonov  
Voronezh, Russia 3941  
tel. (4732) 39-63  
E-mail: managing\_company@efko.

«28» November 2007

Dear Mr Marwan,

I very much appreciate having a prompt reply by Mr. Nakul Rastogi to my letter of 26 November 2007.

However I regret to say that the letter from Mr. Rastogi looks like a mere formal reply. I still hope the refusal of PIL to effect shipment of 9000 mt palm olein results from a misunderstanding between our companies. Such a refusal would seriously undermine the image of your company as perceived by EFKO Group and other partners. In case PIL refuses to effect delivery we shall be obliged to advise of this fact to our major clients (MARS, Kraft Foods etc.) because the olein contracted was intended for production of fats under the contracts with the above mentioned companies and unless PIL delivers the olein we shall have a difficulty supplying the fats at the prices stipulated in September 2007. Since the above mentioned companies keep a prolonged audit trail of suppliers, both PIL and EFKO Group will be included in the "black-list", which means that any cooperation with our company and the companies that buy raw materials from PIL shall be discontinued.

In case you refuse to effect shipment any further business between EFKO and PIL will be completely out of question. For your company this would mean to loose a client who buys nearly 400 thd. mt of tropical oils per year (after we have launched our new plant and transshipment facilities in Taman near Novorossiysk (the Black Sea region) in August 2008).

EFKO Group is a leading oils and fats producer in Russia and CIS, we have an authority in the market and if PIL refuses to effect its obligations we shall not remain silent.

Referring to your proposal to file a lawsuit in order to force your company to fulfill its obligations, we shall undoubtedly be obliged to take action as a final resort. However, I am deeply convinced that settling a dispute in court takes much more resources than finding and amicable solution to the problem.

I look forward to your reply and hope you will not redirect my letter to your subordinates again. I am assured I have never given you cause for avoiding direct contact with me.

Sincerely yours,

Evgeny Lyashenko,  
General Manager,  
EFKO Managing Company.

6/10/2008



41

**From:** Nakul  
**Date:** 12/3/2007 13:11:59  
**To:** Ляшенко Е.В.  
**Subject:** Re: Your Letter

Dear Mr Evgeny,

My apologies for forgetting to attach the letter.

Please find enclosed the same.

Best regards,

Nakul

-----Original Message-----

**From:** Ляшенко Е.В.  
**Date:** 11/30/2007 1:54:38 PM  
**To:** Nakul  
**Subject:** Re: Your Letter

Dear Nakul,

I have received your e-mail, but I am affraid you have not attached the letter. Could you please send the message once again. Thank you.

Kind regards,  
Evgeny Lyashenko.  
[lev@efko.org](mailto:lev@efko.org)

6/10/2008

42



**PACIFIC INTER-LINK SDN BHD**

(Company No. 171377-M)  
31st FLOOR MENARA DATO' ONN, PUTRA WORLD TRADE CENTRE  
45, JALAN TUN ISMAIL, 50480 KUALA LUMPUR, MALAYSIA  
TEL : +603-40423933 (10 LINES)  
FAX : +603-40419399-40423088



DATE : 30<sup>TH</sup> NOVEMBER 2007

TO : EFKO MANAGING COMPANY

ATTN : MR EVGENY LYASHENKO

Dear Mr Evgeny,

We refer to your letter addressed to Mr Marwan dated 28.11.07.

We are once again quite surprised to note the contents of the letter where in you have :

- 1) Accused PIL of refusing to meet unknown contractual obligations.
- 2) Referred that PIL has proposed you to file a lawsuit.

Since we are not able to comprehend any of the above two points, we request you to please clarify and let us know the basis of your allegations.

We would like to inform you that PIL is a very reputable supplier which, over the years, has gained market share in its markets by hard work and total commitment towards its clients

Best regards,

NAKUL RASTOGI

RASTOGI REPLY DECLARATION

EXHIBIT 3

**PACIFIC INTER-LINK SDN BHD**

31<sup>st</sup> FLOOR, MENARA DATO' ONN, PUTRA WORLD TRADE CENTRE  
45 JALAN TUN ISMAIL, 50480 KUALA LUMPUR  
TEL: 603 - 4042 3933 FAX: 603 - 4041 3935 / 4042 8088

**FOB SALES CONTRACT**  
**NO.: PIL/FO/SC/0038/07**

DATE: 23/01/2007  
YOUR REF:

SELLER	PACIFIC INTER-LINK SDN BHD
BUYER	PONTIUS TRADE SA 19, RUE SAINT-LEGER 1204 GENEVA SWITZERLAND
COMMODITY	RBD PALM OLEIN IN BULK
BASIS	FOB
QUANTITY	475000 METRIC TONS
PRICE	USD 572.50 PMT
AMOUNT IN FIGURES	USD 271,937.50
AMOUNT IN WORDS	US DOLLARS TWO HUNDRED AND SEVENTY ONE THOUSAND NINE HUNDRED AND THIRTY SEVEN AND CENTS FIFTY ONLY.
QUALITY	AS PER FORAM STANDARD SPECS (AT TIME OF SHIPMENT)
PAYMENT TERMS	BY SIGHT IRREVOCABLE LETTER OF CREDIT TO BE ADVISED THROUGH RHB BANK BERHAD. L/C SHOULD BE ESTABLISHED AND RECEIVED BY OUR BANK 5 DAYS BEFORE VESSEL ARRIVAL.
OUR BANK	Bank: RHB BANK BERHAD Address: KL TRADE SERVICES CENTRE, LEVEL 3.4, & 5, NO. 75, JALAN TUN H.S. LEE 50000 KUALA LUMPUR Account No.: USD A/C NO: 61412800006928 Swift No.: RHBHMYKL Correspondent: Bank for USD A/C: BANK OF NEW YORK SWIFT: BNPAUS33
SHIPMENT PERIOD	JUNE 2007
ORIGIN	MALAYSIA / INDONESIA
INSURANCE	BUYER'S RESPONSIBILITY TO COVER ALL RISK MARINE INSURANCE AND TO FURNISH SELLERS WITH A COPY OF THE INSURANCE POLICY OR COPY OF THE MASTER OPEN INSURANCE POLICY, WHICHEVER IS RELEVANT.
DISCHARGE RATE	BUYERS GUARANTEE A DISCHARGE RATE OF 100 MT PER HOUR.
DEMURRAGE	AS PER CHARTER PARTY.
OTHER CONDITIONS	WEIGHT, QUALITY AND CONDITION FINAL AT TIME AND PLACE OF LOADING AS PER CERTIFICATES OF A FIRST CLASS INDEPENDENT SURVEYOR AT SELLER'S CHOICE AND COST.

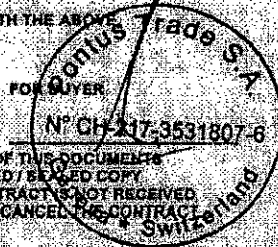
ALL OTHER TERMS, CONDITIONS AND RULES NOT IN CONTRADICTION WITH THE ABOVE AS PER PIL'S TERMS & CONDITIONS.

FOR SELLER  
PACIFIC INTER-LINK SDN BHD



FOR BUYER

N° CH-217-3531807-6



NOTE: THE BUYERS SHALL ACKNOWLEDGE CONTENTS AND RECEIPT OF THIS DOCUMENTS WITHIN 24 HOURS OF TRANSMISSION BY RETURNING THE SIGNED / SEALED COPY OF THE SELLERS. IF THE SIGNED & SEALED COPY OF THE CONTRACT IS NOT RECEIVED WITHIN 24 HOURS, THE SELLER SHALL RESERVE THE RIGHT TO CANCEL THE CONTRACT.